

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11960 OF 2022

Sarvoday Shikshan Sanstha, Umali's
Sharan Guruji High School and Junior College Petitioner

Versus

State of Maharashtra & Ors. ... Respondents

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Mr. Prathamesh Bhargude i/b. Mr. Gurubala Birajdar for the
Petitioner.

Mr. V.S.Gokhale, AGP for the State.

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**CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 12 OCTOBER 2022

P.C. :

Heard the learned Counsel for the parties.

2. The Petitioner has challenged the notice issued by the Respondent No.4 dated 6 September 2022 calling upon the Petitioner to remove the structure which is constructed upon a gairan land. The Petitioner is an educational trust, who conducts a high school and junior college from the premises.

3. The learned Counsel for the Petitioner firstly sought to contend that there is no illegality in the construction carried out by the Petitioner and though the construction is on a gairan land, it was with specific permission of the village panchayat. Secondly, it was to be contended that assuming the construction was without permission carried out on the gairan land, considering the fact that the Petitioner is now conducting the educational institute where around 545 students are taking education, a sympathetic view be taken and as observed by the Hon'ble Supreme Court in the case of *Jagpal Singh & Ors. versus State of Punjab & Ors*¹ in respect of schools.

4. As regards the first contention about legality of the construction, we find that a resolution was passed by the village panchayat on 18 February 1979/ 19 September 1978 whereby a gairan land was allotted to the Petitioner for construction of a school, subject to taking permission from the State Government (Tehasildar). Subsequent resolution dated 21 December 1980 of the panchayat refers to grant of permission by the village panchayat. However, there is no reference to any permission granted by the State Government. The matter was adjourned for the learned Counsel for the Petitioner to take instructions as to whether any documentary evidence exists where the permission was granted by the State Government. The learned Counsel for the Petitioner has reported that the Petitioner is not able to get any such document. There is also

1 (2011) 11 Supreme Court Cases 396

no specific assertion in the petition that the permission was granted by the State Government for construction. Time was also granted to take instructions whether the fact would be asserted on oath or not. However, the learned Counsel for the Petitioner has made the same statement as above. Therefore, it is clear that construction on the gairan land is without permission of the State Government.

5. The learned Counsel for the Petitioner submitted that in these circumstances, the Petitioner's case be considered sympathetically in light of the decision of the Hon'ble Supreme Court in the case of *Jagpal Singh & Ors. (supra)*. In the case of *Jagpal Singh & Ors. (supra)*, the Hon'ble Supreme Court has issued direction for eviction of unauthorized occupants of the public land such as the gairan land and directions were issued to monitor implementation of the order. In the same decision, the Hon'ble Supreme Court has referred to regularization and that it should be permitted in exceptional cases where, by way of illustration, a school, dispensary or other public utility were referred to.

6. The learned Counsel for the Petitioner states that the Petitioner has made a representation to the State Government to consider the case of the Petitioner for regularization on 26 September 2022. However, we note that the representation is made on the basis of that construction is with prior permission of the State Government. However, since this assertion is not correct, the

Petitioner will have to submit a fresh application for regularization to the State Government. The learned Counsel for the Petitioner states that a representation would be submitted to the competent authority/officer of the State within a period of four weeks from today. The Competent Authority would take necessary decision thereupon as early as possible. If such a representation is made within a period of four weeks, till the decision is taken by the Competent Authority, no coercive action of demolition of the Petitioner's school should be taken.

7. The writ petition is accordingly disposed of.

8. We make it clear that we have not commented upon the merits of the representation for regularization, which is for the competent authority/officer to consider on its own merits.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)